

COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF MADISON, WISCONSIN

Resolution No. 4218

Authorizing a space use agreement with Madison Area Technical College for two storage lockers in the north building located at 2202 S. Park Street within The Village on Park.

Presented April 13, 2017
Referred _____
Reported Back _____
Adopted April 13, 2017
Placed on File _____
Moved By Sheri Carter
Seconded By Claude A. Gilmore
Yeas 4 Nays 0 Absent 3
Rules Suspended _____

WHEREAS, the CDA is the owner of certain real property located at 2300 South Park Street, Madison, Wisconsin (the "Property"), more particularly described in the attached Exhibit A; and

WHEREAS, the Property is improved with a commercial building known as The Village on Park (the "Building"); and

WHEREAS, the User would like to use two storage areas in the basement of the office space situated at the north end of the Building ("North Building"); and

WHEREAS, the parties agree to enter into this agreement to set forth the terms and conditions of the User's use of such space.

NOW THEREFORE BE IT RESOLVED that the Community Development Authority of the City of Madison (the "CDA") hereby authorizes a space use agreement (the "Agreement") with Madison Area Technical College within The Village on Park on the following terms and conditions:

1. Premises. The CDA hereby grants the User the right to occupy and use that certain portion of basement in the North Building consisting of two fenced storage areas (the "Premises"), as depicted in the attached Exhibit B, pursuant to the provisions herein.
2. Term. This Agreement shall be for a term of approximately one (1) year, beginning as of April 8, 2017 (the "Effective Date") and expiring at midnight on April 1, 2018 (the "Expiration Date"), unless terminated earlier in accordance with the provisions of Paragraph 12.
3. Hold Over. The User shall surrender the Premises upon the Expiration Date or termination of this Agreement. Any holdover not consented to by the CDA in writing shall not result in a new period of use or interest and, in such case, the CDA may treat the User as a trespasser.
4. Use. The User will occupy and use the Premises for storage purposes only, and for no other purposes whatsoever without the CDA's prior written consent, which consent the CDA may withhold in its sole discretion. The User is responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any such activities.
5. User Fee. No User Fee is payable under this Agreement.
6. Maintenance.
 - a. The User shall, at its own expense, keep and maintain the Premises in a clean and presentable condition consistent with good business practice and in a manner consistent with the preservation and protection of the general appearance and value of other premises in the immediate vicinity. Maintenance responsibilities include, but shall not be limited to, cleaning and removal of garbage and debris.
 - b. The User shall be responsible for the cost and expense of repairs/replacements required by reason of acts or omissions of the User, its employees, agents, invitees, vendors, licensees or contractors.

7. Special Conditions.

- a. The User accepts the Premises in "as-is" condition. Any modifications to the Premises by the User shall be subject to the prior written approval of the CDA and shall be at the User's sole cost and expense.
- b. The User shall be responsible for any extraordinary costs resulting from its use of the Premises (e.g., security services, etc.).
- c. The User shall be responsible for keeping the Premises secure, and providing its own lock to the storage areas.
- d. The CDA is providing User with two access cards to the North Building to be used by staff only. Upon the Expiration Date, User shall return the two access cards to the CDA.
- e. All property belonging to the User, its employees, agents and invitees shall be there at the risk of the User, and the CDA shall not be liable for damage thereto nor theft or misappropriation thereof.
- f. The User shall not disturb the tenants in the North Building.
- g. When the User departs the Building it shall turn off all lights in the basement.

8. Insurance. The User shall procure and maintain during the term of this Agreement Commercial General Liability insurance including, but not limited to, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the City of Madison's Risk Manager) in an amount not less than \$1,000,000 per occurrence as may be adjusted, from time to time, by the City of Madison's Risk Manager (the "Risk Manager"). This policy shall also provide contractual liability in the same amount. The User's coverage shall be primary and list the CDA, the City of Madison, Wisconsin and their respective officers, officials, agents and employees as additional insureds. The foregoing insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII. As evidence of this coverage, the User shall furnish to the CDA a certificate of insurance (the "Certificate") on a form provided by the CDA showing the type, amount, class of operations covered, effective dates, and expiration dates of the required policy. The User shall provide the Certificate to the CDA upon execution of this Agreement, or sooner, for approval by the Risk Manager. The User shall provide copies of additional insured endorsements or insurance policies, if requested by the Risk Manager. The User and/or its insurer(s) shall give the CDA thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the foregoing policies during the term of this Agreement. If the coverage required above expires while this Agreement is in effect, the User shall provide a renewal certificate to the CDA for approval.

9. Indemnification. The User shall be liable to and agrees to indemnify, defend and hold harmless the CDA, the City of Madison, Wisconsin and their respective officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the CDA, the City of Madison, Wisconsin, or their respective officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the User or its officers, officials, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of this Agreement, whether caused by or contributed to by the negligence of the CDA, the City of Madison, Wisconsin, or their respective officers, officials, agents or employees. The terms of this paragraph shall survive termination of this Agreement.

10. Hazardous Substances; Indemnification. The User represents and warrants that its use of the Premises will not generate any hazardous substance, and it will not store or dispose on the Premises nor transport to or over the Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The User further agrees to hold the CDA and the City of Madison, Wisconsin harmless from and indemnify the CDA and the City of Madison, Wisconsin against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the CDA, the City of Madison, Wisconsin or their employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule

presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease, or damage to or loss of use of real or personal property.

11. Default. In the event of the User's default hereunder, after the CDA gives the User written notice thereof, the CDA, in addition to all other rights and remedies accorded by law or in this Agreement, shall have the right to immediately terminate this Agreement and remove the User from the Premises.
12. Termination. Either party shall have the right to terminate this Agreement, at its sole discretion, upon sixty (60) days prior written notice to the other party. Notwithstanding the foregoing, this Agreement shall automatically terminate upon the Expiration Date as provided in Paragraph 2.
13. Right of Entry. The CDA, the City of Madison, and their representatives shall have the right to enter upon the Premises at any time.
14. Assignment. The User shall not assign this Agreement or allow any other persons or entities to use the Premises, or any portion thereof, without the prior written consent of the CDA, which consent the CDA may withhold in its sole discretion.
15. Removal and Disposal of Personal Property. Upon the expiration or termination of this Agreement, the User shall remove all personal property from the Premises. If the User leaves any personal property on the Premises, the CDA shall have the right to dispose of said property, without liability, seven (7) days after the User vacates the Premises and bill User for the cost to dispose of the User's property.
16. Restoration of Premises. Upon the expiration or termination of this Agreement for any cause, the User, at the User's expense, shall restore the Premises to a condition equivalent to that which existed prior to the date that the User first occupied the Premises. Restoration shall be accomplished within fourteen (14) days of expiration or termination of this Agreement. The expiration or termination of this Agreement shall not become effective until restoration has been accomplished to the satisfaction of the CDA; however, during such restoration period the User's right to use the Premises shall be limited to restoration activities and shall not include storage activities. In the event the User fails to accomplish said removal and restoration, the CDA may cause the removal and restoration to be accomplished at the User's expense and with no liability or cost to the CDA. The CDA may waive or alter this removal and restoration requirement if, at its sole discretion, it so chooses.

BE IT FURTHER RESOLVED that the Secretary is hereby authorized to execute and deliver the Space Use Agreement, and to take such other actions as shall be necessary or desirable to accomplish the purposes of this resolution in a form authorized by the City Attorney.